NORTEX GAS & OIL CO.

IBLA 82-592 Decided May 4, 1983

Appeal from decision of the New Mexico State Office, Bureau of Land Management, rejecting competitive oil and gas lease offer NM 51839.

Set aside and remanded.

1. Oil and Gas Leases: Competitive Leases--Oil and Gas Leases: Discretion to Lease

> Where a competitive oil and gas lease high bid is not clearly spurious or unreasonable on its face and the record fails to disclose sufficient factual basis for the conclusion that the bid is inadequate, the decision will be set aside and the case remanded for compilation of a more complete record and readjudication of the bid. A justification memorandum that does not reveal the estimated minimum value for the parcel and the factual data on which the estimate was based is not sufficient to support rejection of the high bid for the parcel.

APPEARANCES: James B. Grant, Esq., Santa Fe, New Mexico, for appellant; Robert J. Uram, Esq., Department Counsel, Office of the Field Solicitor, U.S. Department of the Interior, Santa Fe, New Mexico, for Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Nortex Gas & Oil Company has appealed a decision dated February 8, 1982, by the New Mexico State Office, Bureau of Land Management (BLM), rejecting its high bid of $63,000 for parcel 14 at the competitive oil and gas lease sale held on December 22, 1981. The decision states that the Deputy Conservation Manager for Resource Evaluation, Geological Survey (Survey) (now the Minerals Management Service (MMS)), recommended rejection of this bid as inadequate, based on Survey's presale evaluation of the parcel. 1/

1/ By Secretarial Order No. 3071, published in the Federal Register on Feb. 2, 1982, 47 FR 4751, the Secretary created the MMS to, inter alia, take over the Conservation Division of Survey.

The file contains a recommendation for rejection of high bid which states in its entirety as follows:

> Parcel No. 14 consists of 40 acres in T. 18 S., R. 32 E., sec. 24 (NW 1/4 SW 1/4) in Lea County, New Mexico.
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> This parcel is located between two parcels that were offered in the April 21, 1981 sale. A tract less than a mile north, in the S 1/2 of the SW 1/4 and the SW 1/4 of the SE 1/4 of section 13, went for $2306.81/acre; and a tract approximately a mile to the south in the SW 1/4 of section 25, went for $5188.81/acre. A well just to the east of this tract, located in section 25J, has produced in excess of 7 billion cubic feet from the Corbin Morrow. The presale evaluation was based upon these previous lease sale data and is considerably higher than the high bid of $63,000.00 ($1575/acre) submitted by Nortex Gas and Oil Company. [Emphasis added.]

There is no question that appellant was the highest bidder for the tract in the SW 1/4 of sec. 25. Appellant alleges that MMS ignored the only other well to penetrate the Morrow, the Ralph Lowe-Yates No. 1 Federal in the NW 1/4 of sec. 24. Appellant asserts that this well was found commercially dry in the Morrow and was eventually completed in the Queen formation as a small producer. Appellant also challenges the MMS memorandum on the ground that it does not disclose whether any offsetting wells were considered. Appellant contends that productivity of the Morrow "is predicated upon the development, or lack thereof, of porosity and permeability." Nothing in the recommendation for rejection indicates that any of this information was considered.

BLM responds that MMS maintains extensive files on well production status, drilling activity, bidding payments, comparable sales and other information pertinent to tract evaluation. According to BLM all pertinent data were considered in arriving at the conclusion that appellant's bid was inadequate. 2/ Apparently referring to the Ralph Lowe-Yates well in sec. 24, BLM states in its reply that the "status of this well has been clear for many years," that it was "omitted because it was not significant standing alone," and that any bearing it might have had on fair market value was included in the bids on the two comparable parcels (Reply to Statement of Reasons at 2, 4).

In their briefs to this Board both appellant and BLM refer to a well designated L. R. French 1-Aztec Uncle in the NE 1/4 NW 1/4 sec. 28, almost 4 miles from parcel 14 and from the L. R. French Uncle Sam well in the SW 1/4 of sec. 25. Appellant states that this well offsets MMS' comparable sale in that section.

[1] MMS was the Secretary's technical expert in matters concerning geologic evaluation of tracts of land offered at a sale of competitive oil

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2/ Appellant does not challenge the Secretary's discretionary authority to reject a high bid, nor his right to rely on MMS as his technical expert in geologic evaluation of tracts for oil and gas lease purposes.

and gas leases and the Secretary is entitled to rely on MMS' reasoned analysis. 3/ L. B. Blake, 67 IBLA 103 (1982). When BLM relies on that analysis in rejecting a bid as inadequate, it must provide a reasoned and factual explanation in support of the decision for the record. Southern Union Exploration Co., 41 IBLA 81, 83 (1979). Otherwise, if the bid is not clearly spurious or unreasonable on its face, this Board has consistently held that the decision must be set aside and the case remanded for compilation of a more complete record and for readjudication of the acceptability of the bid. Southern Union Exploration Co., supra; Charles E. Hinkle, 40 IBLA 250 (1979); Yates Petroleum Corp., 32 IBLA 196 (1977). The Board has elaborated on the reasons for this as follows:

> [T]he appellant is entitled to a reasoned and factual explanation for the rejection of its bid. Appellant must be given some basis for understanding and accepting the rejection or alternatively appealing and disputing it before this Board. The explanation provided must be a part of the public record and must be adequate so that this Board can determine its correctness if disputed on appeal. Steven and Mary J. Lutz, 39 IBLA 386 (1979); Basil W. Reagel, 34 IBLA 29 (1978); Yates Petroleum Corp., 32 IBLA 196 (1977); Frances J. Richmond, 24 IBLA 303 (1976); Arkla Exploration Co., 22 IBLA 92 (1975).

Southern Union Exploration Co., 51 IBLA 89, 92 (1980).

BLM's decision is deficient because it did not reveal the presale evaluation of parcel 14 or the estimated fair market value and the factual data on which the estimated market value was based. The MMS memorandum does not adequately indicate fair market value or make it obvious that appellant's bid was too low. The Board will not substitute its judgment for that of MMS but it will require sufficient facts and a sufficiently comprehensible analysis to insure that a rational basis for the determination is present. Robert Paglee, 68 IBLA 231 (1982).

While it is undoubtedly true that MMS has extensive records on which it may draw in reaching its conclusions, whether it did so in this case is not apparent from the record we have before us. In several recent cases the Board has emphasized the importance of furnishing the subsidiary factual data upon which MMS based its presale evaluations. Larry White, 72 IBLA 242 (1983); Petrovest, Inc., 71 IBLA 250 (1983); Amoco Production Co., 71 IBLA 241 (1983). A presale evaluation based only upon previous lease sale data or supported by minimal factual information is not sufficient unless such comparison shows the bid to be clearly spurious or unreasonable on its face. We are unable to determine the correctness of BLM's decision from the record nor can this determination be made on review of the briefs on appeal. Accordingly, we remand this case to BLM for readjudication of appellant's bid. In readjudicating the bid BLM should consider the arguments presented by appellant. If the bid is rejected again, BLM shall set forth the reasons for doing so completely, stating the facts which are the basis for the presale evaluation, in

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3/ Secretarial Order No. 3087, dated Dec. 3, 1982, consolidated the mineral leasing functions of the MMS within the BLM. 48 FR 8982 (Mar. 2, 1983).

order that the facts and reasoning may be addressed by appellant and considered by the Board in the event of an appeal. Snyder Oil Co., 69 IBLA 259 (1982).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the devision of the New Mexico State Office is set aside and the case remanded for further action consistent with this opinion.

R. W. Mullen

Administrative Judge

We concur:

Will A. Irwin
Administrative Judge

Douglas E. Henriques
Administrative Judge